

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY, Plaintiff

v.

NO. 3:05-CV-304 PHILLIP/GUYTON

FOX OF OAK RIDGE, INC. and BENJAMIN H. CURD, Defendants

APPEARANCES:

ROBERT J. ENGLISH, MICHAEL C. INMAN, Attorneys for the Plaintiff, Thomas Neely

CLINT J. WOODFIN, Attorney for the Defendant, Fox of Oak Ridge, Inc. and Benjamin H. Curd

DEPOSITION OF THOMAS M. KOENIG, M.D. November 30, 2005

1 client and Mr. Inman's client, Thomas Neely. And if you 2 would throughout this deposition, testify based on 3 reasonable medical certainty or probabilities. Will you do 4 that for us? 5 A I will. 6 Q Okay. Dr. Koenig, where do you practice 7 medicine? 8 A I practice in Knoxville, Tennessee, on 9 Kingston Pike. 10 Q What's your specialty? 11 A Orthopedic surgery. 12 Q Doctor, what does that mean, what does 13 that entail? 14 A It involves the study and treatment of 15 bones, muscles, tendons, ligaments, discs and nerves. 16 Q Okay. And where did you take your 17 medical training, sir? 18 A Most of my medical training was in 19 Philadelphia, Pennsylvania. I went to a medical school 20 there called Hahnemann Medical University, and then from 21 there I did a residency for five years at Hahnemann Medical 22 University, and then I did an optional one year in 23 Washington, D.C. with George Schonholtz in arthroscopy. 24 Q Okay. Doctor, where do you do your 25 surgeries here in Knoxville when you do surgery?

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Table with 2 columns: WITNESS and PAGE. Includes THOMAS M. KOENIG, M.D. with sub-entries for Direct Examination, Cross Examination, and Redirect Examination.

EXHIBITS

Table with 3 columns: NO., DESCRIPTION, and PAGE. Lists exhibits 1 through 4 including Curriculum vitae, List of medical expenses, and MRI reports.

1 A I've got privileges at a fair number of 2 facilities. Most of my surgery is done out west, the more 3 major cases at Parkwest. There are a bunch of surgery 4 centers like Parkwest Surgery Center Tower, Knoxville 5 Surgery Center, Fort Sanders West. It may be easier to 6 tell you where I don't have privileges, but primarily out 7 here in the west. 8 Q Okay. Is that for convenience sake? 9 A Yes. Whenever I first came here in 10 1992, I didn't mind the travel so much and thus I had 11 privileges at Children's, I'm sorry, East Tennessee 12 Children's, U.T., Regional, and as your practice matures, 13 you don't have the time to run around to the various 14 different places, so it's more or less stayed out here in 15 the west. 16 Q Doctor, as a matter of maturity, how 17 long have you practiced, been licensed to practice 18 orthopedic surgery in the state? 19 A In the state, since '92. 20 Q Okay. Are you Board certified, sir? 21 A Yes, sir. And recently recertified. 22 Q Okay. What does it mean to be Board 23 certified, Dr. Koenig? 24 A When you sit for your Boards the first 25 time, you undergo a rigorous written exam with several

1 The videotaped deposition of THOMAS M. KOENIG, 2 M.D., taken by agreement of counsel, for any and all 3 purposes allowable under the Federal Rules of Civil 4 Procedure, before DENISE M. HOOD, Court Reporter and Notary 5 Public in and for the State of Tennessee at Large, on the 6 30th day of November, 2005, at the office of the witness, 7 11808 Kingston Pike, Knoxville, Tennessee.

8 It is agreed that the reporter may swear the 9 witness, take the deposition stenographically, and 10 afterwards reduce the same to typewritten form when the 11 completed deposition may be used in the above-styled cause.

12 The plaintiff does not waive any objections until 13 the time of the trial. All formalities are expressly 14 waived as to caption, certificate, transmission, and the 15 reading and signing of the deposition by the witness.

16 THOMAS M. KOENIG, M.D., 17 having been first duly sworn, was examined and 18 deposed as follows:

19 DIRECT EXAMINATION

20 BY MR. ENGLISH:

21 Q Would you state your name for the 22 record?

23 A Sure. Thomas Martin Koenig, M.D.

24 Q Dr. Koenig, my name is Bob English, as 25 you know, and I'm here to ask you some questions about my

1 hundred questions. I no longer remember, but I'm sure it's 2 four or five hundred questions, and you have to pass those. 3 On the assumption that you've passed those, then the Board 4 queries you as to what you actually do as far as practice 5 goes, and you have to simulate for them and gather all the 6 x-rays, all the operative reports for about a six-month 7 period of your time and they have the ability to scrutinize 8 that. They ask you to come to Chicago and you carry a 9 bunch of bags with x-rays and all kinds of stuff, MRI's, 10 your operative reports, and then they grill you. You sit 11 for about eight hours and they ask you anything and 12 everything and hopefully you pass, and if you pass, then 13 you are, at that time, Board certified. I think ever since 14 1988, if you're certified, you're certified for a limited 15 time, ten years, then you had to re-sit for Boards again. 16 Q And you did so? 17 A Yes, sir. I think I'm good through the 18 year 2014, if I'm not mistaken. I have a CV, if you'd 19 like. 20 Q Doctor, we have a copy of your CV. 21 Would you hand that to the doctor and see if that's the 22 most recent CV he has, Ms. Court Reporter? 23 A Yes. That is correct. And I'm 24 recertified through the 31st of December, 2014. 25 MR. ENGLISH: Let's make your CV Exhibit

1 Q Show the jury, if you would, what we're
 2 talking about there.
 3 A Sure. If you don't mind, I'm going to
 4 turn this around this way. This is his tailbone. I'll
 5 turn it to the side because I think that that's going to
 6 show up better for the camera. The tailbone typically is
 7 broken here at the junction of the sacrum -- I'll do it
 8 this way. Here's where your sacrum ends. This is your
 9 coccyx. Usually there's a fracture right here whereby this
 10 then tips forward and comes up this way. That's what we're
 11 talking about.
 12 Q And you don't know how that happened?
 13 A No, sir, nor did I really need to
 14 evaluate that. That was taken as part of his history, and
 15 that is if you will, sir, effectively an orthopedic mile
 16 away from where his other pathology is. You can't be off
 17 this much as an orthopedic surgeon and not get in trouble.
 18 So in short, this ends up -- he could have told me he
 19 fractured his great toe as well and it impacted his
 20 impairment the same way. He received neither additional
 21 nor a discount in his impairment rating because of that
 22 1982 fracture down here.
 23 Q If he had had some trauma which caused a
 24 jarring of his spine, would that not be important to you?
 25 A All history would be important. Yes,

1 visit that he was treating with Dr. Degnan and that he was
 2 giving complaints that, quote, "Went in one ear and out the
 3 other?"
 4 A Yes, sir. That's his history.
 5 Q Did you also review the report from the
 6 emergency medical technicians that saw him at the scene of
 7 the accident?
 8 A I know that I reviewed the emergency
 9 room report per se. If you have a reference for me to --
 10 Q Let's stick with that emergency room
 11 report. I think that's what my notes said, and I just
 12 misread it.
 13 A Okay.
 14 Q Again, looking at that with regard to
 15 the lack of loss of consciousness, there was also a note
 16 that there's minimal damage to his vehicle in that report
 17 as well?
 18 A Yes. That's what I noted in the
 19 emergency room reports dated the 12th of July, 2004.
 20 Q He then saw you ten days later on the
 21 22nd of October of 2004, correct?
 22 A Yes, sir.
 23 Q You made a finding there that there was
 24 a bruise on his back that you didn't see on the first
 25 visit, if I read that correctly.

1 sir.
 2 Q And that could possibly impact the
 3 status of his discs or the level of degeneration that was
 4 present that you saw?
 5 MR. ENGLISH: I'm going to object to
 6 possibly. Many things could possibly impact it.
 7 Q Assuming that to be correct that he had
 8 some trauma to his tailbone, you would expect that there
 9 would be some trauma on the discs, would you not?
 10 A Not necessarily. I think I could tell
 11 you that there would be a fair number of patients that
 12 could have a coccyx fracture and have no other spinal
 13 pathology, but you are correct in the fact that if you had
 14 enough trauma to break a bone here, it's possible to have
 15 enough trauma elsewhere to do damage elsewhere. Yes, sir.
 16 Q Especially a man this size?
 17 A Yes, sir.
 18 Q Someone who's three hundred and thirty,
 19 three hundred and fifty pounds, if there was trauma
 20 sufficient to crack their tailbone, that would also have an
 21 impact on their lower lumbar spine, would it not?
 22 A If you could use the word possible, I
 23 could say yes.
 24 Q And you just don't know because you
 25 didn't find out one way or the other?

1 A Yes, sir.
 2 Q Okay. Any explanation for that?
 3 A Sometimes it will take a little bit
 4 longer for bruising to occur, especially on a gentleman
 5 this large. If the bruising occurred at a muscle that was,
 6 let's say, an inch and a half deep, sometimes it takes
 7 awhile for the bloody pigment, the biliverdin and the
 8 hemoglobin to penetrate up to the skin. That's one
 9 possibility.
 10 Q Three months and ten days?
 11 A I agree with you. That's probably
 12 pushing it.
 13 Q So there's really no explanation why
 14 that bruise is there?
 15 A No, sir.
 16 Q Okay. I think you had wanted to start
 17 treating him for his neck in November of 2004, and I think
 18 you explained that you did one part at a time and finally
 19 then the neck came available, but it looked like November
 20 was when you first wanted to do that?
 21 A Yes, sir. That would be typical that we
 22 would add one body part per visit.
 23 Q In looking at your notes, it looks like
 24 for whatever reason that day, there was a child
 25 accompanying him that was running around in the examining

1 A That's correct.
 2 Q Were you shown pictures of the vehicles
 3 in this accident?
 4 A I believe I was, and if I did, I would
 5 have referenced that. If you'll give me thirty seconds --
 6 Q I believe you were -- okay.
 7 A I apologize that I don't have the
 8 immediate recall to say yea or nay. I do believe I was
 9 shown pictures. However, if I was shown pictures, I do
 10 believe I would have recorded them as such. I've looked
 11 through the first two notes that I had where you would
 12 think that he would have presented them on the first or
 13 second office visit, and I don't have that recorded. So
 14 I'm sorry that my memory cannot definitively state whether
 15 or not I was shown pictures of the motor vehicle accident.
 16 Q Okay. Back again to that first visit,
 17 he also told you that he lost consciousness at that time,
 18 did he not?
 19 A Yes, sir.
 20 Q You have reviewed the emergency room
 21 record either from receiving it from the attorney or from
 22 Mr. Neely himself that noted in that record that he did not
 23 lose consciousness?
 24 A That's also correct.
 25 Q He was reporting to you on that first

1 room, and you didn't get to work on his neck that day?
 2 A Yes, sir.
 3 Q He had had his MRI for his low back at
 4 that time, and that's when you noted he had this congenital
 5 defect in his lumbar spine?
 6 A Yes, sir.
 7 Q And that was there before the accident,
 8 as you've told us?
 9 A Yes, sir.
 10 Q Whether or not that was giving him a
 11 problem, you only know based on the history that he gave
 12 you that it was not problematic, and that's what you're
 13 basing that on?
 14 A Yes, sir.
 15 Q You started focusing on the neck in
 16 December of 2004, and you said you doubted there was any
 17 cervical radiculopathy present, correct?
 18 A Yes, sir.
 19 Q And that means there wasn't anything
 20 pressing on the nerves from what you saw on the MRI which
 21 would cause him pain and numbness in his arms?
 22 A Yes, sir.
 23 Q But he was making complaints of pain and
 24 numbness in his arms?
 25 A Yes, sir. That would be what we were --